

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-11

In the Matter of

Amendment of Part 73 Relating
to Call Sign Assignments for
Broadcast Stations

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 20, 1987; Released: October 30, 1987

By the Commission:

INTRODUCTION

1. By this *Report and Order*, we are modifying our rules regarding assignment of conforming call signs to stations in different services. We will permit assignment of conforming call signs to stations in different services that are not commonly owned if the station requesting the assignment obtains written permission from any stations already using the desired basic call sign. We also are streamlining the present rules applicable to call signs of stations involved in change of ownership transactions. These changes will provide broadcast applicants and licensees with greater flexibility in choice of call letters and permit licensees to retain their call signs in cases where they change to different facilities in the same market. We are not, however, adopting our proposal to eliminate the geographic restrictions on the use of "K" and "W" as the first letters of call signs.

BACKGROUND

2. The current broadcast call letter rules reflect modifications that resulted from a 1983 rule making proceeding. In the *Report and Order* in that proceeding (1983 *Report and Order*), the Commission revised call sign rules that had been in use for 10 years.¹ The major rule changes in that action were: 1) a shift in procedure to have call letter disputes resolved in local forums, rather than at the FCC; 2) the elimination of a requirement that commonly-owned stations that are assigned conforming basic call letters be located in the same or adjacent communities; and 3) adoption of a "first-come-first-served" policy for assignment of relinquished call letters.

3. On February 4, 1987, the Commission adopted a *Notice of Proposed Rule Making (Notice)*, 52 FR 7627, to consider further changes to its broadcast call sign rules. The Commission indicated that, after developing experience with the 1983 rules, it believed that further revisions to the conforming call signs and first-come-first-served rules and one additional change to eliminate the rule concerning initial letters K and W in call signs were in

order. The Commission received 38 comments and two reply comments in response to the *Notice*. A list of the commenting parties appears as Appendix B.

DISCUSSION

Conforming Basic Call Signs

4. The current rules provide that identical basic call signs can be assigned only to commonly controlled stations in different broadcast services. The effect of this rule is to reserve many call signs for the exclusive use of owners of stations in multiple broadcast services and, conversely, to limit other owners from using those call signs in the same or different markets. This rule was adopted for the purposes of preventing public confusion and prohibiting one broadcaster from trading on the goodwill of another.²

5. In the *Notice*, we stated that the rule restricting the use of conforming call signs except where the stations are commonly owned no longer appears to serve any valid public interest purpose. We indicated that it appeared from our recent decisions in this area that the original objectives of this rule warrant neither the kinds of restraints on call sign use that had previously been applied nor Commission involvement in commercial disputes over call signs between broadcast station licensees. In particular, we observed that in our decision to abolish the former rule that provided for a 180 day period in which relinquished call signs were not available to be reassigned, we had concluded there was insufficient evidence of confusion to warrant retention of this rule.³ The *Notice* further observed that in *Arch Communications, Inc.*, the staff rejected the public confusion rationale in permitting a new UHF television station to adopt a basic call sign that had been used by a television station in the market ten years earlier and was at that time in use by two radio stations in the same market.⁴

6. The *Notice* also indicated that undesirable trading on another broadcasters' goodwill may not be characteristic of all such situations. In *Arch Communications*, for instance, we granted a waiver to permit the new UHF station to use the same basic call sign already in use by two radio stations in the market on the basis that the licensee of the radio stations consented to the arrangement. In view of these considerations, we tentatively concluded that the general prohibition in our rules on use of the same basic call sign by stations in different services that are not commonly owned appeared unnecessary and, therefore, proposed to delete it. We questioned, however, whether it would be advisable to permit unrestrained use of conforming call signs in the same market by stations not commonly owned. We proposed to require that in such situations call sign applicants obtain the written consent of licensees of any stations in other services in the market that may already be assigned the desired basic call sign.

7. Most of the commenting parties oppose our proposal to allow non-commonly owned stations in different services to use the same call sign. These parties claim the proposed rule changes are unnecessary and inadvisable in view of the fact that virtually thousands of call signs remain available. Many express concern that if the same call sign were used by different licensees it would cause confusion for the public and the industry in the identification of stations. The National Association of Broadcasters (NAB) and Arbitron Ratings Company are particularly

concerned that public confusion about station identification would result in distortion of audience ratings data.⁵ To the extent that ratings are skewed by stations sharing call signs, commenters claim that advertisers will be unable to determine the accuracy of the data resulting in the misallocation of advertising dollars causing marketplace inefficiencies. They further contend that the identification problem would be particularly troublesome where distant signals, via sky wave or cable carriage, get into a market that has stations with the same call sign. Other commenters maintain that stations wishing to protect their goodwill could be forced into unnecessary copyright litigation.

8. A few commenters address our proposal to require a station requesting a call sign to obtain permission from any stations in other services that already may be using the desired basic call sign in the same market. These parties generally agree that the consent approach can prevent trading on the goodwill of established stations that would occur absent a consent requirement. However, they submit alternative proposals for the area in which permission would be required that vary in degree and definition. With respect to our same market proposal, Capital Cities/ABC, Inc. (ABC) suggests that permission be required within a station's total audience survey area. Buck Owens Production Co. (Owens) recommends that it be required within the station's entire service area and that applications for conforming call signs be accompanied by an engineering showing of that area. Others propose that permission be required within adjacent markets, within adjacent states, and nationwide.

9. Several commenters support our proposal to allow the same basic call sign to be assigned to stations in different services that are not commonly owned. These parties generally contend that the current rule unnecessarily discriminates against new permittees by limiting call sign options.

10. We recognize commenters concerns for the potential problems that could result if we were to permit unrestrained use of the same basic call sign by broadcast stations in different services that are not commonly owned. As indicated by the Arbitron study, it appears that audiences rely on call signs to identify broadcast stations to a degree greater than we were previously aware. If viewers/listeners were to misidentify stations that used the same basic call letters, the ratings data relied upon by the industry to measure audience size and composition could be seriously distorted. There also is potential for confusion by both audiences and other broadcast industry participants, particularly advertisers, concerning the relationship or management of stations using the same basic call sign. If a station were to trade on another station's goodwill by using its call sign, it could improve its competitive position without providing the quality of services, both program and business, that would be necessary to achieve that improvement in a fair market. Conversely, the programming and business services of a station seeking to use a call sign might be such that they would be detrimental to the goodwill and reputation of a station already using that call sign. We further observe that there are in excess of 23,000 possible call sign combinations still available for use by broadcast stations and thus agree with commenters point that there is no compelling need to take action to expand the number of available call signs.⁶

11. Nonetheless, we continue to believe that it is not necessary to maintain an absolute prohibition on the use of conforming call signs by stations that are not commonly

owned. Based on the experience of our past actions relating to this area, as discussed above, there are situations where use of conforming call signs by stations that are not commonly owned may be desirable for stations and would not have disruptive effects on the market.

12. We believe that the potential problems associated with use of conforming call signs by stations in different services that are not commonly owned can be avoided by requiring a station seeking to use a particular call sign to obtain written permission from other stations that may already be using the desired basic call sign. In this respect, economic incentives appear adequate to direct individual stations to avoid any undesirable uses of conforming call signs. Broadcast stations generally have a strong interest in accurate, credible measurement of their audiences. Should advertisers become concerned about the reliability of estimates of a station's audience, they might become reluctant to buy time on the station or to pay the station's asking price for time. Broadcasters also would be sensitive to any possibility that advertisers or other trading parties might mistake the identity of their station to its possible detriment. Similarly, they would be expected to consider the extent to which another station using its call letters could trade on or affect its goodwill and reputation. Thus, broadcasters would have strong incentives to consider the potential for adverse effects from mistaken identity or relationships in any decision to agree to another station's use of their call letters.

13. On this basis, we will modify our rules to permit assignment of the same basic call sign to stations in different services that are not commonly owned, subject to a requirement that an applicant for a conforming call sign obtain, and submit with its application, written permission from any other stations that may already be using the desired call letters.⁷ If disputes arise regarding the use of a conforming call sign, the effected parties may pursue in local forums any appropriate remedies, including, for example those provided under contract or trademark law. The possibility of such disputes arising would be another element that a station would consider in granting permission. In view of the fact that broadcast stations sell time and participate in program supply and other markets on a national as well as local basis, we conclude that the harmful effects from mistaken station identity are not limited to any particular geographic area. Therefore, the consent requirement will not be limited to station's market or service area, but will extend nationwide.

First - Come - First - Served - Policy

14. The rules currently provide that call signs are to be assigned on a first-come-first-served basis. Under current procedures, the licensee of a station seeking a call sign change requests the desired call sign and, when the change becomes effective, relinquishes its existing call. The relinquished call sign is not available until the effective date of the change, at which time it may be assigned to the first applicant requesting it. These rules do not provide for call sign exchanges when a station transfers to another frequency in the same market. The only way to transfer a call sign in such cases is to relinquish it and then request that it be assigned to the new frequency.

15. In the *Notice*, we observed that there appears to be no public interest benefit in requiring a broadcaster to risk losing an established call sign by relinquishing it and requesting it again for another frequency in the same market. The Commission noted that the staff has permit-

ted such limited exceptions to the first-come-first-served policy in cases of call sign swaps between commonly owned stations in the same city and where a broadcaster transferred operations to a new frequency in the same market but retained the same staff, format and operations.⁸ On this basis, we proposed to modify the first-come-first-served policy for call sign assignments to provide an exception to permit, on a routine basis, transfers of basic call signs in cases where licensees of stations located in the same market swap frequencies or where a station switches to a new frequency in the same market.

16. The commenting parties generally support this proposal. The NAB, Bonneville International Corporation and Shamrock Broadcasting state that under the present rule, a station changing facilities in the same market risks losing an established call sign for no apparent public interest reason. Owens points out that under the proposed rule change stations will be encouraged to improve facilities without fear of losing built-up goodwill. Owens further states that the proposal recognizes the importance of an established call sign to the broadcaster, whose reputation and investment of time and money are associated with that call sign. Others suggest that streamlining the process for same market ownership changes is in the public interest in that it would not contribute to public confusion, and it would expedite processing of call sign requests. Commenters further submit that there is no reason to retain this rule since the Commission routinely grants exceptions to these rules anyway. Finally, some commenters observe that where a swap of call letters occurs, both licensees have agreed to the switch; therefore, neither licensee can be considered to have taken advantage of the other.

17. The record reinforces our initial assessment that it would be appropriate to exempt call sign transfers in same market frequency swaps and shifts by a single station to a new frequency in the same market from the first-come-first-served call sign assignment rule. We see no reason not to allow stations involved in such actions to retain call signs in which the licensees have invested time and money to enhance their goodwill and reputation. In the case of a swap of frequencies, both parties have come to a mutual agreement and there appears to be no public interest benefit in requiring these licensees to risk losing established call signs. Also, we have routinely permitted exceptions to the first-come-first-served policy where commonly-owned stations licensed to the same city swap call signs. We have also permitted exceptions where an existing broadcast station switched to a new frequency in the same market. None of these actions has resulted in any apparent harm to the public interest or otherwise contravened the objectives of our first-come-first-served call sign policy. Given these facts, we will revise our call sign rules to waive the first-come-first-served policy with respect to licensees requesting transfer to another frequency where the existing and new facilities serve substantially the same area (i.e., where at least one of the stations serves both of the communities of license).

First Letter K and W Assignments

18. At present, Section 73.3550(e) of the rules provides that call signs beginning with the letter "K" will not be assigned to stations located east of the Mississippi River and that call signs beginning with the letter "W" will not be assigned to stations located west of it.⁹ Some exceptions to this rule have been allowed where the station was

commonly owned with another station in the area and the stations were in close proximity to the Mississippi River.¹⁰ In addition, there are a few stations whose call signs were assigned prior to the adoption of this rule and do not comply with it that have been grandfathered. In the *Notice*, the Commission stated that it believed there is no public interest justification for retaining the geographic restriction on assignment of K and W call signs and proposed to eliminate this rule.

19. Commenters oppose lifting the geographic restriction on assignment of call signs beginning with K or W. Many state that there is no valid reason to change the K,W rule because it is an administrative convenience, is orderly, and is one of the long-standing traditions of broadcasting. They also point out that this rule provides a useful means of distinguishing, by geographic region, stations with otherwise similar call signs. Commenters submit that the K,W distinction provides useful information to the public, advertisers and the broadcast industry about the region in which a station is located. Commenters also point out that if the K,W distinction were eliminated, a station obtaining the identical last three call letters of an established station could capitalize on the goodwill of the established station. They contend that such abuses could lead to stations seeking to register their call sign as a service mark and could further lead to expensive litigation. Commenters also claim that eliminating the K,W geographic distinction would only confuse the public where two or more stations would have the same last three letters but differ by only K and W as the first letter.

20. Upon consideration of the statements and information submitted by commenters, we find that the K,W rule does not impose a significant burden on broadcast licensees. In the *Notice*, we indicated that elimination of this rule appeared desirable in that it would increase the options available to licensees in the choice of call letters. On further reflection, however, such a change would not actually increase the pool of available call signs, but only provide the minimal benefit of expanding the areas in which the existing call sign possibilities can be used. We also note that there is no shortage of available call sign combinations, as there are in excess of 23,000 possible call signs not in use at this time. Moreover, we recognize commenters position with respect to the value of maintaining the traditional radio station identification conventions embodied in the K,W rule. In view of these considerations, we conclude that the benefits of maintaining the geographic restriction on assignment of K and W as the first letter of call signs outweighs any minor inconvenience it may pose for some broadcasters. Therefore, we are retaining the K,W geographic restriction rule.

PROCEDURAL MATTERS

21. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. **Need for and purpose of the rules.** The rule changes adopted herein are intended to provide greater flexibility and choice on the part of the licensees in call letter assignments. In addition, we are removing unnecessary burdens that will expedite the assignments of call letters in certain instances.

II. Summary of issues raised by public comment in response to the initial to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

A. Issues Raised. No commenting parties raised issues in response to the initial regulatory flexibility analysis.

B. Assessment. Our reexamination of our initial proposals, in light of the comments received, indicated that our proposal generally to permit unlimited use of conforming call signs by stations in different services that are not commonly owned, except where the stations are in the same market could result in undesirable consequences for broadcast markets. In addition, we determined that our proposal to eliminate the K,W rule would not significantly expand the availability of broadcast call signs. It appears that retaining the K,W rule has greater value as an identifiable, geographic convenience for the broadcasting industry, the FCC and the public than as an expedient for increasing call sign options.

C. Changes made as a result of comments. As a result of the comments in this proceeding, we are adopting an alternative rule change concerning use of conforming call signs that will avoid the undesirable effects that might result under our initial proposal. The new rule will permit assignment of conforming call signs where the call sign applicant obtains the consent of any other stations that may be using the desired basis call sign. In addition, we are not adopting the proposal to eliminate the K,W geographic distinction.

III. Significant alternatives considered and rejected. We have considered all the alternatives presented in the *Notice*, and comments in this proceeding. After full consideration of all of the issues raised throughout the course of this proceeding, we have adopted the rules that we believe are the most reasonably fashioned in light of the facts and issues presented.

22. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by OMB.

23. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603 (a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§601 *et seq.*, (1981).

24. Accordingly, IT IS ORDERED that under the authority contained in Sections 4 (i) and 303 of the Communications Act of 1934, as amended, Part 73 of the Commission's Rules and Regulations IS AMENDED as set forth in the Appendix A below. These rules and regulations are effective **December 14, 1987**.

25. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.3550 is amended by revising paragraph (d), revising paragraph (h) by adding a note, revising paragraph (i), and adding a new paragraph (n) to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

* * * * *

(d) Where an application is granted by the FCC for transfer or assignment of the construction permit or license of a station whose existing call sign conforms to that of a commonly owned station not part of the transaction, the licensee shall, within 30 days after consumation, request a different call sign or submit a statement of written consent to retain the conforming call sign from the existing owner and the licensee of any other station that may be using the station's call sign. In such cases, should a suitable application or proper consent statement not be submitted within that period of time, the FCC will, on its own motion, select an appropriate call sign and effect the change in call sign assignment.

* * * * *

(h) * * *

Note: The provisions of paragraph (h) of this section shall not apply to a licensee requesting a transfer to another frequency where the existing and new facilities serve substantially the same area (i.e. where at least one of the stations serves both communities of license).

* * * * *

(i) Stations in different broadcast services which are under common control may request that their call signs be conformed by the assignment of the same basic call sign if that call sign is not being used by a non-commonly owned station. For the purposes of this paragraph, 50% or greater common ownership shall constitute a prima facie showing of common control.

* * * * *

(n) Where a requested call sign, without the "-FM" or "-TV" suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, the applicant must obtain and submit with the application for the call sign the written consent of the licensee(s) of such station(s).

APPENDIX B

List of Commenters

1. Andy James Fakas (also filed reply comment)
2. Arbitron Ratings Company
3. Bonneville International Corporation
4. Booth American Company
5. Brill Radio Inc., Diversified Communications and Family Stations, Inc.
6. Buck Owens Production Company, Inc.
7. Captial Cities/ABC Inc.
8. CBS Inc.
9. Fisher Broadcasting Inc.
10. Gannett Company, Inc., and Lee Enterprises, Inc.
11. Haley, Bader and Potts
12. Joint Comments-A.H. Belo Corporation, Cosmos Broadcasting Corporation First Media Corporation, Multimedia, Inc., Silver King Broadcasting Company, Inc., TAK Communications, Inc. and Root Communications
13. Journal Broadcasting of Kentucky, Inc. (also filed reply comment)
14. Ka'ikena Lani Television Corporation
15. KBOX
16. Knight Quality Stations
17. KUNC-FM
18. Lincoln Group, LTD.
19. Maryland-District of Columbia-Delaware Broadcasters Association
20. Meredith Corporation
21. National Association of Broadcasters
22. National Broadcasting Company
23. National Communications Inc. and King Broadcasting Company, Inc.
24. National Public Radio
25. North Carolina Association of Broadcasters
26. Ohio Educational Broadcasting Network Commission and the Board of Regents of the University of Wisconsin System
27. Price Communications Corporation
28. Pulitzer Broadcasting Company
29. Sarkes Tarzian, Inc.
30. Seven Hills Television Company
31. Shamrock Broadcasting Inc., Ralph C. Wilson Industries and Capitol Broadcasting Company
32. Susquehanna Radio Corporation
33. Swartz, Woods & Miller
34. Taft Television and Radio Company, Inc. and EZ Communications, Inc.
35. Tichenor Media System, Inc.
36. Tribune Broadcasting Company
37. Westinghouse Broadcasting Company
38. WGAU

FOOTNOTES

¹ See *Report and Order* in MM Docket No. 83-373, 95 FCC 2d 1079 (1983), *recon. denied*, 56 RR 2d 540 (1984).

² *Report and Order* in Docket No. 17477, 41 FCC 2d 481 (1973).

³ See 1983 *Report and Order*, *supra* at para. 10.

⁴ See *Arch Communications Inc.*, 58 RR 2d 235 (1983).

⁵ Arbitron argues that call letters are the principal means by which broadcasters and the public identify stations. It supplies a study which shows that 76 percent of radio audience diary respondents and 89 percent of television audience diary respondents identify stations by their call sign only.

⁶ There are a total of 35,152 possible combinations of four letter K and W call signs available for full service AM, FM and TV broadcast stations and approximately 11,500 such stations are currently authorized. Assuming that each station is assigned a separate call sign (in fact many commonly owned stations use the same basic call sign) and that approximately 500 call signs are undesirable by any station for various reasons, there are in excess of 23,000 possible call signs still available.

⁷ This action applies only to stations in different services, i.e., AM, FM, and TV. Stations in the same service are not being permitted to use the same call signs. Use of the same call signs by stations in the same service was not contemplated in the *Notice*. Thus, in compliance with the provisions of Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, our actions herein do not in any respect alter our policy prohibiting use of the same call sign by stations in the same service.

⁸ See letter of September 11, 1986 from the Mass Media Bureau Video Services Division, granting a request by Booth American Company to retain call letters WIOG-FM, Saginaw, Michigan on a new station in Bay City, Michigan. In that case, the staff observed that under the current rules a broadcaster's only option to ensure transfer of the call letters of a former station to a new station is to request assignment of the basic call sign to another commonly owned station, assuming one exists. Since the call sign is not relinquished the first-come-first-served rules does not apply. The licensee can then apply to use the desired basic call sign at the new station. The staff concluded in the Booth American case that this two step procedure serves no public interest goal where the transfer to another frequency occurs within the same market.

¹⁰ See 47 CFR 73.3550(e). The Mississippi River does not extend all the way to the Canadian border. We approve the staff's present practice, in allocating new call signs, of extending a line from the headwaters of the river to a point just east of International Falls, Minnesota, to complete the dividing line between the K and W zones.

¹¹ In *RJR Communications, Inc.*, 49 FCC 2d 994 (1974), the Commission granted common call letters KSGM (AM) and KSGM-FM to commonly owned stations licensed to St. Genevieve, Missouri, and Chester, Illinois, both communities on the Mississippi River. Again, in *Doubleday Broadcasting Co. v. FCC*, 655 F. 2d 417 (D.C. Cir. 1981) the Commission assigned call letters KWK and KWK-FM to St. Louis, Missouri and Granite City, Illinois, respectively located west and east of the Mississippi River but in close proximity to each other. More recently, the Commission changed the call letters of station WZEN (FM), Alton, Illinois, to KATZ-FM at the request of the licensee, which is also assignee of station KATZ (AM), St. Louis, Missouri (by letter of September 8, 1986, from Chief, Video Services Division, Mass Media Bureau).